

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

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SSM Chippewa Tribal Court

COURT OF APPEALS

Robert Peterson v. People of the Sault Ste. Marie Tribe of Chippewa Indians

APP-12-04

Decided March 14, 2013

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SSM Chippewa Tribal Court

BEFORE: FINCH, HARPER, KRONK, JUMP, and NERTOLI Appellate Judges.

OPINION AND ORDER

Kronk, Appellate Judge, who is joined by Appellate Judges Finch, Harper, Jump, and Nertoli. This Court heard oral argument in this matter on January 15, 2013.

As explained more fully in the discussion below, this Court affirms the trial court's decision entered on September 6, 2012.

Factual and Procedure Background

On March 21, 2012, Robert Peterson (Appellant) was issued a ticket by the Sault Ste. Marie Tribe of Chippewa Indians for violating Section XXI(a) of the Chippewa Ottawa Resource Authority (CORA) Rules and Regulations. Specifically, Appellant was charged with having "engaged in subsistence fishing without updating his [Sault Ste. Marie Tribe of Chippewa Indians] fishing card" which expired on December 31, 2011. Relevant to these proceedings, Appellant is a citizen of both the Sault Ste. Marie Tribe of Chippewa Indians and the Mackinac Band.

On September 6, 2012, the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court found that "the People has met the burden of establishing, by a preponderance of the evidence, that the Defendant was engaged in subsistence fishing activities on March 21, 2012." *The People of the Sault Ste. Marie Tribe of Chippewa Indians v. Robert Peterson*, Opinion and Order C-12-117, 1 (Sept. 6, 2012). Furthermore, the Tribal Court determined that "the Defendant [Appellant] did not contest that his Sault Tribe-issued subsistence license was expired and had not been renewed as of March 21, 2012." *Id.* Notably, at the time of his citation, Appellant presented the conservation officers with an apparently valid fishing license from the Mackinac Band. Accordingly, at trial, Appellant asserted that the valid fishing license from the Mackinac Band protected him from liability under the CORA Rules and Regulations. Ultimately, after explaining the limited jurisdiction of the Tribal Court, the Tribal Court concluded that "the Court [Tribal Court] cannot consider the Defendant's license issued by the Mackinac Band as a defense to this action." *Id.* at 2. Accordingly, the Tribal Court concluded that "for the reasons stated above, and by a preponderance of the evidence, the Court finds that the Defendant is responsible

for violating CORA Section XXI(A), and further order the Defendant to pay a \$100.00 fine and \$50.00 in court costs within the next thirty (30) days.” *Id.*

Appellant now appeals from the Tribal Court’s September 6, 2012 order. The Appellant raises two broad arguments on appeal. First, Appellant asserts that “[t]here exists no physical evidence for leading to the conclusion of ‘preponderance’ of the evidence.” *People of the Sault Ste. Marie Tribe of Chippewa Indians v. Robert Peterson*, Notice of Appeal, Case No. C-12-117 (Oct. 5, 2012). Second, “Defendant Peterson takes the position that the Honorable Judge Fabry [Tribal Court Judge], as an officer of the court, must rule on legal issues raised and also rule in favor of the United States Supreme Court.” *Id.*

The Court heard oral argument on the present matter on January 15, 2013. Supplemental briefs were requested on the question of whether the CORA Consent Decree could lawfully infringe upon the traditional homelands of the Mackinac Band and were submitted to the Court.

Jurisdiction and Standard of Review

This Court has exclusive jurisdiction in this matter, as it is reviewing the decision of the Tribal Court. Tribal Code Section 82.109.

In matters involving a finding of fact by the trial court, this Court will review to determine whether the trial court’s determination was “clearly erroneous.” Tribal Code Section 82.124(1). “In applying the clearly erroneous standard of review, the Court will determine whether it is left with a ‘definite and firm conviction’ that the trial court made an error in its findings of fact.” *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02, 3 (August 4, 2008). The Tribal Court’s conclusion that the Appellant was engaged in subsistence fishing without a valid fishing license from the Sault Ste. Marie Tribe of Chippewa Indians is a question of fact and therefore the clearly erroneous standard applies.

Appellant also asserts that the Tribal Court erred by failing to consider the impact of Appellant’s apparently valid fishing license from the Mackinac Band on the citation he was issued. The Tribal Court’s determination that it did not have the jurisdiction to address this argument is a conclusion of law. According to Tribal Code Section 82.124(5) “[a] conclusion of law shall be reviewed by the Court of Appeals without deference to the Tribal Court’s determination, i.e., review is *de novo*.” Accordingly, this Court will review Appellant’s second argument *de novo*.

DISCUSSION

As stated above, Appellant raises two issues on appeal. First, Appellant questions whether the Sault Ste. Marie Tribe of Chippewa Indians established by a preponderance of the evidence that Appellant was fishing without a valid subsistence fishing license. Second, Appellant challenges the Tribal Court’s failure to adequately consider the impact of Appellant’s apparently valid

fishing license from the Mackinac Band on these proceedings. This Court will address each of these arguments in turn.

Issue One: Preponderance of the Evidence as to Appellant's Subsistence Fishing Without a Valid License from the Sault Ste. Marie Tribe of Chippewa Indians

As previously explained, Appellant asserts on appeal that the Tribal Court erred in finding that a preponderance of the evidence existed as to Appellant's subsistence fishing without a valid license. Specifically, Appellant argues that there is no physical evidence to support this determination. Moreover, Appellant goes on to explain that:

Defendant Peterson [Appellant] filed a Motion to Dismiss in hopes to hear testimony that could have led to evidence discovered that could have been used in a defense of the charges against the Defendant. Said motion was denied ... Defendant Peterson believes that this ruling created an abuse of discretion resulting in the prevention of a fair trial because of the discovery concern.

People of the Sault Ste. Marie Tribe of Chippewa Indians v. Robert Peterson, Notice of Appeal, Case No. C-12-117 (Oct. 5, 2012).

The Tribal Court provided an explanation for how it came to the conclusion that a preponderance of the evidence existed supporting the citation issued to Appellant. Specifically, the Tribal Court explained that

Factually, the Court finds that the People have met the burden of establishing, by a preponderance of the evidence, that the Defendant was engaged in subsistence fishing activities on March 21, 2012. The Defendant's own statement, as testified to by Sergeant Grondin, was that he had been out lifting his nets that day and pulled them "because the fishing was not good." That statement, not disputed by the Defendant, and taken in conjunction with the rest of the testimony provided, constitutes sufficient evidence of fishing activity. Regardless of whether the Defendant caught the three reported Menominee by hook-and-line or gill net, the fact that he was lifting and pulling nets that day means he was engaged in 'fishing' or 'fishing activity' under the CORA Regulations § III(k). In addition, the Defendant did not contest that his Sault Tribe-issued subsistence license was expired and had not been renewed as of March 21, 2012.

The People of the Sault Ste. Marie Tribe of Chippewa Indians v. Robert Peterson, Opinion and Order C-12-117, 1 (Sept. 6, 2012). Accordingly, the Tribal Court has provided a reasonable interpretation supporting its conclusion that some form of fishing occurred. Moreover, all parties seem to agree that Appellant did not have a valid subsistence fishing license from the Sault Ste. Marie Tribe of Chippewa Indians at the time of his citation.

On the other hand, Appellant asserts that some different evidence may have possibly been produced in his favor at an additional hearing. Given that Appellant was given a hearing on these issues and such evidence failed to materialize, it would appear that this is conjecture on the part of Appellant.

Therefore this Court is not of “definite and firm conviction” that the Tribal Court made an error in its findings of fact, as the Tribal Court’s conclusions appear reasonable in light of the record available to this Court. Accordingly, the Tribal Court’s findings of fact in this matter are affirmed.

Issue Two: Impact of Mackinac Band Fishing License

The second issue on appeal involves the impact of Appellant’s apparently valid fishing license from the Mackinac Band. Because this issue involves a question of law, the Tribal Court’s decision that it did not have jurisdiction to adjudicate the Appellant’s claims in this regard is reviewed *de novo*.

As previously stated, Appellant is a member of the Mackinac Band and the Sault Ste. Marie Tribe of Chippewa Indians. At the time he received his citation, he apparently offered the officers an invalid (expired) subsistence fishing license from the Sault Ste. Marie Tribe of Chippewa Indians and a valid fishing license from the Mackinac Band. The area where the Appellant was fishing is supposedly within the aboriginal homelands of the Mackinac Band, as recognized in the Treaty of 1836, but this same territory now falls under the jurisdiction of the Sault Ste. Marie Tribe of Chippewa Indians under the Consent Decree related to CORA. The Sault Ste. Marie Tribe of Chippewa Indians is a party to CORA, but the Mackinac Band is not. Both tribes are signatories to the Treaty of 1836. All parties seem to agree to the majority of these facts.

What is at issue on appeal is whether the Tribal Court’s determination that it did not have the jurisdiction to adjudicate Appellant’s argument as to the validity of his fishing license from the Mackinac Band was the correct decision. Accordingly, we start with a review of the Tribal Court’s jurisdiction in civil matters. Tribal Code Section 81.103 defines the civil jurisdiction of the Tribal Court, as

The Tribal Court shall have jurisdiction of actions:
(1) Except as otherwise provided by federal law and unless waived
in accordance with Tribal
Code Chapter 44, where the defendant is:

- (a) The Sault Ste. Marie Tribe of Chippewa Indians.
- (b) A Tribal entity as defined in Tribal Code Chapter 85.
- (c) An officer or employee as defined in Tribal Code Chapter 85 and the action arises from a Tribal function as defined in Tribal Code Chapter 85.
- (2) Where the Tribe or a Tribal entity claims an interest in any real or personal property located on Tribal lands which is the subject of the action.
- (3) Where the Plaintiff is the Tribe or Tribal entity.
- (4) As provided in any other chapter of the Tribal Code.
- (5) Where the transaction or occurrence giving rise to the cause of action arose or occurred within the Tribal lands; and
 - (a) The defendant is a tribal member, a tribal member owned business, or an Indian or business owned by an Indian.
 - (b) The defendant does business upon Tribal land with the Tribe, a tribal member, or 81-4 a tribal member owned business.
 - (c) The property involved in the action is located on Tribal land.

Furthermore, Tribal Code Chapter speaks to Treaty Fishing Regulations, and Tribal Code Section 20.111 provides that “[t]he Sault Ste. Marie Chippewa Tribal Court shall have exclusive jurisdiction over any violation of these rules and regulations alleged to have been committed by a tribal member.” There is nothing in either Tribal Code Section 20.111 or Section 80.103 to suggest that the Tribal Court would have jurisdiction over a similar matter if a non-Sault Ste. Marie Tribe of Chippewa Indians citizen were involved. Accordingly, the Tribal Court had jurisdiction over Appellant in this matter by virtue of his citizenship in the Sault Ste. Marie Tribe of Chippewa Indians.

Appellant would have the Tribal Court reach beyond its jurisdiction to determine the rights of the Mackinac Band vis-à-vis a federal instrument, the Consent Decree related to the CORA rules and regulations. The Tribal Court does not have the authority under the above mentioned jurisdictional provisions to make this determination.

Additionally, the Tribal Court was not in a position to assert jurisdiction over this matter because indispensable parties to such a determination, such as the Mackinac Band, federal government, Michigan and the Sault Ste. Marie Tribe of Chippewa Indians, are not parties to the present matter. Given the rights of each of these sovereigns are potentially implicated by Appellant’s argument, it would be impossible to proceed in adjudicating such a claim without these sovereigns being party to this matter.

Moreover, it is not necessary to reach the issue of the validity of the Mackinac Band’s fishing licenses in this case. It is undisputed that Appellant is a citizen of the Sault Ste. Marie Tribe of Chippewa Indians. Citizenship in any sovereign comes with responsibilities. As a citizen of the Sault Ste. Marie Tribe of Chippewa Indians, Appellant was responsible for maintaining a valid fishing license under the CORA Rules and Regulations. Accordingly, the Tribal Court acted appropriately in asserting jurisdiction over a citizen of the Sault Ste. Marie Tribe of Chippewa

Indians, as provided for in Tribal Code Sections 20.111 and 81.103. Appellant is held to the same standards as any other citizen of the Sault Ste. Marie Tribe of Chippewa Indians.

Appellant has raised some very interesting arguments in his appeal, especially at oral argument and in his supplemental February 11, 2013 brief to this Court. This Court takes no position on the validity of his arguments regarding the Mackinac Band's rights. Rather, it is this Court's opinion that the Sault Ste. Marie Tribe of Chippewa Indians' Tribal Court is not the proper forum to adjudicate such rights, especially given that the Mackinac Band and United States of America are not parties to this matter. Furthermore, as previously explained, indispensable parties necessary to the adjudication of such a claim are not present in this matter. Additionally, given Appellant is a citizen of the Sault Ste. Marie Tribe of Chippewa Indians, adjudication of these rights is not necessary to reach a final judgment in this matter. The Tribal Court and this Court have jurisdiction in this case because of Appellant's citizenship in the Sault Ste. Marie Tribe of Chippewa Indians and therefore do not have the authority to speak to his rights and responsibilities as a member of the Mackinac Band. Similarly, the French courts cannot speak to the rights and responsibilities of Iranian citizens. To hold otherwise would be contrary to well-established principles of sovereignty. While such intervention into the affairs of the Mackinac Band may seem advantageous to Appellant in the short term, the long term impact of such intervention would likely undermine the sovereignty of the Mackinac Band. And, this Court specifically declines to so undermine the sovereignty of a separate entity.

As mentioned at oral argument, the Court was impressed with the arguments raised, especially by Appellant's lay advocate. Again, this Court does not address the legitimacy of Appellant's arguments. Rather, at the end of the day, this is the wrong forum for such arguments and Appellant, because he is a citizen of the Sault Ste. Marie Tribe of Chippewa Indians as well as the Mackinac Band, may be the wrong person to bring forward such claims.

For the reasons stated above, the Tribal Court's determination that it did not have jurisdiction to determine the scope of the Mackinac Band's authority under the Consent Decree and related CORA Regulations is affirmed.

ORDER

For the reasons explained above, the Tribal Court's Order and Opinion in this matter is affirmed. Accordingly, Appellant is responsible for violating CORA Section XXI(A), and ordered to pay a \$100.00 fine and \$50.00 in court costs within the next thirty (30) days.

It is SO ORDERED.